

# ARKANSAS SUPREME COURT

No. CR 06-389

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered June 22, 2006

CHARLES L. JOHNSON  
Appellant

*PRO SE* MOTION TO FILE HAND-  
WRITTEN BRIEF [CIRCUIT COURT  
OF PULASKI COUNTY, CR 2003-2774,  
HON. WILLARD PROCTOR, JR.,  
JUDGE]

v.

STATE OF ARKANSAS  
Appellee

APPEAL DISMISSED; MOTION MOOT

## PER CURIAM

In 2004, judgment was entered reflecting that Charles L. Johnson had been found guilty of second-degree forgery by the court in a trial to the bench. Appellant was sentenced as a habitual offender to 10 years' imprisonment. The Arkansas Court of Appeals affirmed. *Johnson v. State*, CACR 04-945 (Ark. App. April 13, 2004). Subsequently, appellant timely filed in the trial court a *pro se* petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. Therein, appellant maintained that his trial counsel and appellate counsel rendered ineffective assistance of counsel. After a hearing, the trial court denied the petition, and appellant, proceeding *pro se*, has lodged an appeal in this court from that order.

Now before us is appellant's *pro se* motion to file a partially-handwritten brief in this matter. We need not consider the motion as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward because he failed to demonstrate a legitimate basis for the petition. Accordingly, we dismiss the appeal and hold the motion moot. This court has consistently held that

an appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

In his Rule 37.1 petition, appellant argued that trial counsel and appellate counsel were ineffective with regard to handling a charge of theft of property filed against appellant. Appellant, the pastor and founder of Holy Anointing Deliverance Church, retrieved a church bank account checkbook from the home he shared with Ms. McCauley, appellant's then-wife. Ms. McCauley was the sole signatory on the checking account. At the bank, appellant wrote a check to "cash" on the church's account to which he signed his name as the signatory, and then endorsed the back of the check with his own signature. He returned to the bank a short time later, retrieved the check with his signature and then signed Ms. McCauley's name above his own on the signature line. Appellant maintained that he was convicted of a second offense, theft of property, that stemmed from his taking the church's bank account checkbook. However, in the case presently before the court, appellant was charged only with forgery, not theft of property.<sup>1</sup>

Appellant's complaints about his counsels' assistance are related to a charge not included in the case on appeal. Thus, appellant's claim of ineffective assistance of counsel does not have a basis in fact, and appellant would be unable to prove that either counsel rendered ineffective assistance.

Appeal dismissed; motion moot.

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<sup>1</sup>We note that in Pulaski County Circuit Court case number CR 2003-1947 appellant was charged with third-degree domestic battery, resisting arrest and theft of property. The theft of property charge in that case was related to appellant's taking the church bank account checkbook. The trial court held its bench trial on both cases at the same time. However, in his notice of appeal, appellant only appealed case number CR 2003-2774 that did not include the theft of property charge.